

## **TRANSMITTAL # 4**

### **MEMORANDUM**

**January 28, 2005**

**TO:** Workforce Development Council

**FROM:** Roger B. Madsen, Director

**SUBJECT:** Analysis of Proposed “Clawback” Provision for Idaho’s Workforce Development Training Fund

**ACTION REQUESTED:** Approve the staff recommendation to retain flexibility in the application of a clawback provision for WDTF contracts

#### **BACKGROUND:**

The Workforce Development Training Fund (WDTF) was established to encourage healthy business growth in Idaho by supporting the training necessary to ensure a qualified workforce for new or existing companies that are expanding in Idaho.

The WDTF was established in 1996 to help existing Idaho companies grow and to attract new business to the state. In creating this economic development tool, the legislature designed WDTF to support training opportunities in high wage and high skill jobs.

The Workforce Development Council is responsible for the development and oversight of procedures, criteria and performance measures for the Workforce Development Training Fund.

#### **Funding Criteria**

Within that legislative framework, the following policies and funding criteria have been developed by the Council:

- Help companies identify and fund training of new employees, taking full advantage of specific economic opportunities and industrial expansion initiatives.
- Upgrade skills of current workers who are at risk of being permanently laid off.
- Highest priority are Idaho industries that sell most of their products and services outside of the state or the market area where they are located, thereby bringing new revenue into the state and creating new jobs. Industries, such as retail, which sell products and services primarily in the local area, are

recirculating existing revenues. These companies are eligible only if a compelling economic benefit to the state can be shown.

- Qualified companies in urban counties can receive up to \$2,000 in training funds for each new job created when training at least five new permanent positions.
- A rural component streamlines the application process for businesses in rural counties with high unemployment or low per capita income. These rural businesses are eligible for up to \$3,000 for each new position created.

The Department of Commerce and Labor, in consultation with the State Division of Professional-Technical Education, reviews and approves proposals based on the WDTF funding criteria. The Director of Commerce and Labor has the authority, in consultation with the Governor's office, to approve a project contingent upon receipt of a successful application from the company. A successful application must address, at a minimum, the training plan, timelines, training provider, job quality performance measures (wage rate, number of positions to be created, employer benefits) and budget.

The Department of Commerce and Labor is responsible for WDTF contract management, modifications, and project reimbursement. The State Division of Professional-Technical Education is responsible for reviewing and approving the general training plan and, if necessary, the curriculum. The Department of Commerce and Labor, and the State Division of Professional-Technical Education are responsible for providing technical assistance and evaluation of the project.

### **Funding Source**

The Workforce Development Training Fund uses a 3% offset from the Unemployment Insurance Trust Fund and generates approximately \$3 million in annual revenues. The program has been operational since 1996 and to date has contracted with over 119 employers to train approximately 13,904 employees. The fund has generated approximately \$29 million and is currently \$5.8 million overcommitted. This over-commitment is possible because funds are paid to employers over time to reimburse them for the actual training expenses; the fund receives additional resources each quarter as Unemployment Insurance taxes are paid; and not all commitments made to companies looking to expand or relocate in Idaho result in actual contracts. In addition, Idaho Commerce and Labor has the ability to stop writing new contracts until the cash flow will support obligations.

### **“Clawback Proposal”**

Earlier this year, the Workforce Development Council was asked to consider a revision to the WDTF guidelines to incorporate a “clawback” provision. The term “clawback” is an economic development term describing the ability of a municipality to seek reimbursement from a company that fails to meet all or some of its employment or capital investment commitments. The Council asked that an alternative term be used and this will be done. For the purposes of this analysis, we have retained the term “clawback”.

A clawback provision was initially considered due to unsuccessful WDTF investment in third party call centers in 2003. Agency staff and Council members realized that third party call centers' employment levels fluctuate due to changes in the market. As a result of this instability, the Workforce Development

Council determined that the WDTF would no longer award training funds to call centers that are dependent on securing outsource contracts to maintain their business operation. The Council focused on the industry in question rather than establishing a clawback provision for all WDTF recipients. No provisions are in place to require companies to repay the Workforce Development Training Fund as a result of company closures due to unforeseen changes in the market.

### **Implementation Options**

Inclusion of a clawback provision can be implemented by the Council in two ways:

1. Instruct the Director of Commerce and Labor to review the performance and economic stability of each WDTF applicant and determine if inclusion of a clawback provision with specific terms and conditions is appropriate.
2. Establish a clawback policy to be included in every WDTF contract.

To determine appropriate action, the Council may wish to consider existing WDTF policies and procedures designed to protect the assets of the fund, and the factors which have led to their development.

### **Administrative Processes to Ensure Accountability ~**

- Payments are made on a cost reimbursement basis for training performed and materials provided as outlined in the final contract.
- All work must be complete as billed and the company is liable for any discrepancies in documentation.
- To obtain reimbursement of actual training costs, companies must submit progress and financial information that reports the following information:
  - Signature Form authorizing reimbursement
  - Year-To-Date Positions Created
  - A list of the Trainees' Name and Social Security Number
  - Position Title
  - Cost Per Trainee
  - Number of Trainees Placed in Employment
  - Trainee Wages Prior to and on Completion of Training
  - Impact of training on Worker's Skills
  - Financial Report itemizing their training expenses with supporting invoices

### **Limiting Risk with Reimbursement Policy and Oversight ~**

- Funds are disbursed based only on the actual number of positions created, regardless of the funds initially reserved in the contract or the full training expense incurred by the company.

Example: A contract is written for the creation of 5 positions at \$2,000 per position for a total award of \$10,000. The company requests reimbursement for \$6,000 for training expenses but only one position has been created. Reimbursement would be reduced to \$2,000 until the company creates the other positions.

- Unemployment Insurance records are used to monitor the level of employment. In addition, during the course of the contract, if companies indicate they may not meet contract obligations, the contract is either suspended for a period of time or terminated.

### **An Investment in Idaho Workers ~**

Individuals receive skill training that prepares them for their existing job or future job opportunities. Funds are not used to build a company's physical infrastructure. Existing employees benefit from the Workforce Development Training Fund and companies benefit from a trained workforce.

The attachment reports change in wages as a result of individuals who benefited from training. Graph 1 illustrates that individuals who received training in 1998 experienced a wage increase of nearly thirteen percent from pretraining wages to posttraining wages. Graph 2 shows that individuals who received training in 2002 experienced a wage increase of approximately thirty one percent from pretraining wages to posttraining wages. This is exemplary considering this occurred during a recessionary period.

This data demonstrates that individuals who receive training through the WDTF may realize anywhere from five to twenty-seven percent stronger wage growth, depending on the strength of the economy.

### **Value vs. Risk ~**

Incentives provided by state and local municipalities may in some cases be costly per job created. State and local practitioners are cognizant of this fact and formulate plans to determine if the benefit to the community and State outweighs the incentives' costs; the effect on local and state taxes; increase in wage earnings for local residents; company capital investment; earning potential for local businesses to support the expansion; and industry diversity, etc. The WDTF investment to date reports an average cost per trainee of \$1,705.

Workforce Development Training Funds have been used to support employment expansion with companies that, due to changes in market conditions or other factors, have downsized or are no longer operational in Idaho. There is no evidence that these companies closed their operation due to fraudulent activities. To date, of the 119 companies who have benefited from WDTF 14 are no longer operational. This represents 3% of the total WDTF current budget of \$29,233,539. The success of the program may outweigh the risk of losing a new or existing company by requiring a clawback.

The process of recapturing funds will create an administrative burden on the program and may prove to be costly with legal and accounting fees. Secondly, it may prove to be difficult to apply a standard clawback provision within each contract. Contracts are negotiated and if there is no latitude for change, companies may choose not to expand in Idaho.

**IMPACT**

The Workforce Development Training Fund is one of the few economic development tools practitioners across the state can offer new or existing companies expanding their operations. The issue is not whether the WDTF is a valuable resource for companies to successfully train their workforce; evidence would support a positive impact. The issue at hand is whether the benefits afforded to companies to use Workforce Development Training Funds to train their workforce without a clawback provision is worth maintaining when administered judicially with companies as determined by the Director of Commerce and Labor.

The State of Idaho continues to market to new and existing companies Idaho’s natural attributes such as its quality labor force, educational system, quality of life, and proven business friendly environment. However, in today’s competitive economic market, sometimes the incentive package is what is needed to close the deal. These incentives are offered to companies who are expanding to provide better job opportunities and income for Idaho citizens.

Imposing a clawback provision within each contract has the potential for greater loss than gain. The program has been successful and has benefited many individuals – companies received funding to train a quality workforce and workers received training to increase their skills.

**STAFF RECOMMENDATION:**

Based on the above analysis, staff believe that the outcomes of the program to date do not support a need for a policy change. Staff recommend that the Workforce Development Council authorize the Director of Commerce and Labor to retain the current flexibility to impose a clawback provision when he determines it to be in the best interest of the fund without mandating clawbacks for all contracts.

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Attachment